

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2014030270
[Primary Case]

SOUTH PASADENA UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014030840

ORDER FOLLOWING PREHEARING
CONFERENCE

On May 30, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Marian H. Tully, Office of Administrative Hearings (OAH). Student's mother appeared on behalf of Student. Debra Ferdman, Attorney at Law, appeared on behalf of South Pasadena Unified School District (District). The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Mediation and Hearing Dates, Times, and Location. The joint motion for a two day continuance of the due process hearing from June 9, 2014, until June 11, 2014, in order to participate in mediation on June 10, 2014, is granted for good cause. The parties requested the two day continuance because the due process hearing was set for 1:30 p.m. on Monday, June 9, 2014, which would not allow sufficient time to conduct the mediation and begin the hearing on that day. Accordingly, to allow sufficient time for mediation, the due process hearing is continued until June 11, 2014. Mediation shall take place on June 10, 2014, beginning at 9:30 a.m., at District offices, 1020 El Centro Street, South Pasadena, California, 91030.

The hearing shall take place on June 11, 12, 16, 17, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., with the exception of the first day of hearing, on which day the hearing shall begin at 9:30 a.m., unless otherwise ordered. The due process

hearing shall take place at District offices located at 1020 El Centro Street, South Pasadena, California, 91030. If District is unable to provide a suitable room for the days scheduled, District shall notify OAH and Student by 5:00 p.m., June 4, 2014. If District does not have a suitable room for the hearing, the hearing shall take place at the Office of Administrative Hearings, 15350 Sherman Way, Suite 300, Van Nuys, California 91406.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing “good cause” to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues at the due process hearing of the consolidated cases are listed below.

- a) Did District deny Student a free appropriate public education (FAPE) by failing to:
 - i) Assess Student in all areas of suspected disability?
 - ii) Have an occupational therapist and a speech therapist consider or review District’s psycho-educational report before the initial individualized education program team meeting in June 2013?
 - iii) Find Student eligible for special education under the categories of other health impairment based upon attention deficit hyperactivity disorder and/or specific learning disability?
 - iv) Provide Student appropriate special education services to address Student’s needs in the areas of behavior, vocational skills, fine motor coordination, speech pragmatics and expression, and assistive technology?
- b) Was District’s June 2013 psycho-educational assessment appropriate such that District is not required to fund the independent assessments requested by Student?
- c) Did District properly conclude Student was not eligible for special education?

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter “S” or “D” in front of the exhibit to designate if it is a Student or District exhibit (for example, “S-5, S-6, or D-1, D-2”). Each exhibit shall be internally paginated by exhibit, or all of a party’s exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. District has served its evidence binder upon Student. Student shall serve Student’s evidence binder upon District no later than 5:00 p.m., June 4, 2014, in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each

party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Timely Disclosure of Witnesses/Exhibits. The parties have filed and served exhibit lists. District filed and served a witness list. Student did not timely disclose any witnesses as required by Education Code section 56505, subdivision (e)(7), OAH Scheduling Order issued March 7, 2014, and the Prehearing Conference Order issued March 28, 2014. District has agreed to make witnesses listed on District's list available to Student. Accordingly, Student may not call any witnesses that were not disclosed by District in District's witness list unless called solely for rebuttal or impeachment.

5. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement, or included in this Order, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

6. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination. If a witness is to be called by more than one party, the party first conducting cross-examination of that witness shall include in that examination all questions intended for the witness on direct examination, in order that each witness need appear and testify only once.

7. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). Any party seeking to present a witness by telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and

the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements and any other requirements determined to be necessary at the discretion of the ALJ, have been fulfilled.

8. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. The parties have agreed District shall go first.

9. Motions. At present no prehearing motions are pending or contemplated, except for a possible Motion for Reconsideration of the Order Denying Request for Continuance dated May 29, 2014. Any motion filed after this date, except for a motion to reconsider the May 29, 2014 Order, shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of May 30, 2014.

10. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

11. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

12. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

13. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

14. Hearing Open To the Public. At the request of the parent, the hearing will be open to the public. At Parent's request, District shall provide seating for approximately five people.

15. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

16. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 30, 2014

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings